

[From the Wall Street Journal, May 22, 2003]
SOME INVESTORS COULD TRIM THEIR TAX
BILLS TO NEAR ZERO

(By John D. McKinnon and Ann Davis)

After Congress gets through with President Bush's tax proposal, some rich investors may be able to avoid paying almost any taxes.

The latest tax-cut proposal being honed by House and Senate leaders Wednesday night would reduce tax rates for most investors to 15 percent from the current 38.6 percent maximum for dividends; the typical 20 percent for capital gains would also shrink to 15 percent. A Senate plan would go further, allowing taxes on dividends to disappear, at least temporarily.

Those are juicy breaks by themselves, but some experts warned the potent changes could combine with other existing tax-law provisions—particularly the deductibility of interest on funds borrowed for capital investments—to give some investors very low effective tax rates or even no tax. For example, well-to-do taxpayers could borrow large sums, sheltering much of their income from personal-tax rates that would run as high as 35 percent under the bill, and invest the money in stocks paying dividends that would be taxed at very low rates. (Taxpayers may have to review some other popular investment plans.)

"I guarantee it produces very, very low [tax] rates," possibly even zero, says Ronald Pearlman, a tax-law professor at Georgetown University.

The strategy is available not for investors willing to borrow and invest in growth stocks that produce capital-gains income. Deductions are somewhat limited by current tax rules. Still, without changes in the rules, this relatively simple strategy could become more attractive and convenient for wealthy individuals, because investors could obtain tax advantages from investing in dividend-paying stocks as well.

And experts warned of still-more-complicated games. Officials estimated that for 2003, about \$290 billion in capital-gains income and \$120 billion in dividends would be subject to the new 15 percent rate. Pamela Olson, the assistant Treasury secretary for tax policy, dismissed many of the concerns as "hyperventilating" by congressional critics opposed to the bill.

Other experts also played down the risk of gaming the new tax rules under the emerging House-Senate compromise. Much of current tax-shelter alchemy involves trying to turn ordinary income like dividends—now taxed at the highest rates—into capital gains, which enjoy a preferential tax rate. Equalizing the rate for dividends and capital gains at 15 percent would eliminate much of that gaming and could actually simplify the tax code somewhat.

But Ms. Olson said there are specific avoidance schemes that could be of concern in the new system, without citing examples. The Treasury might need broad authority to write rules to prevent abuses, she said. Wednesday, congressional aides were working on language that would deny the tax break for some foreign personal holding companies, which often are located in tax havens. Foreign companies with U.S. shareholders generally were going to get the break, but some further exceptions were possible.

Another potential loophole, some experts said, would allow shareholders to significantly reduce their capital-gains taxes. That would happen because the proposal as now envisioned wouldn't limit companies to distribute their current earnings. For example, a company might issue new shares as dividends until all its historical earnings and

profits are distributed. Under the tax code, shareholders could be able to avoid tax on future cash dividends. This is because dividends are taxable as income only to the extent a company has any accumulated earnings and profits.

Ms. Olson said she doubted many companies would try such a move because investors would shun firms whose dividend payouts gyrated enormously from year to year.

"I just don't see how that would happen in the real world," she said. During debate in Congress, the administration embraced a provision that would allow companies to accumulate earnings over several years that could be used to pay out tax-free dividends, but would impose some limit on the fund.

Meanwhile, many ordinary investors also could realize more garden-variety tax savings, for example by trading in their taxable bonds for tax-advantaged stock. That would also generate a new wave of business for investment banks, whose underwriting business has been moribund.

"All manner of preferred stocks will become more popular for the retail investor" if the plan becomes law, because of their newly tax-advantaged dividends, said Robert Willens, managing director and tax and accounting analyst for Lehman Brothers. And many companies will consider replacing their debt with equity to take advantage of the demand.

One of the products that could get a boost, he said, is convertible preferred. Another product he expects to see, which he says hasn't been issued recently, is called "discounted preferred stock." It is a product similar to a zero-coupon bond, where an investor buys preferred stock at, say, \$25 and can redeem it at \$50 after a seven-year maturation period. The difference between the purchase price and the redemption price is treated as dividend income. In the old tax scheme, this wasn't attractive because the "phantom" income of \$25 had to be taxed on an "economic accrual basis" over the seven-year period at high rates. "But at 15%, it begins to look a lot more attractive," he said.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. BONILLA (at the request of Mr. DELAY) for today and the balance of the week on account of family reasons.

Mrs. EMERSON (at the request of Mr. DELAY) for today after 4:30 p.m. and the balance of the week on account of attending the graduation of her stepson at West Point, New York.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 515. An act to provide additional authority to the Office of Ombudsman of the Environmental Protection Agency; to the Committee on Energy and Commerce.

ENROLLED BILL SIGNED

Mr. Trandahl, Clerk of the House, reported and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 1298. An act to provide assistance to foreign countries to combat HIV/AIDS, tu-

berculosis, and malaria, and for other purposes.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 330. An act to further the protection and recognition of veterans' memorials, and for other purposes.

ADJOURNMENT

Mr. ROHRBACHER. Mr. Speaker, pursuant to House Concurrent Resolution 191, 108th Congress, I move that the House do now adjourn.

The motion was agreed to.

Accordingly, pursuant to the previous order of the House of today, the House stands adjourned until 2 p.m. on Tuesday, May 27, 2003, unless it sooner has received a message from the Senate transmitting its adoption of House Concurrent Resolution 191, in which case the House shall stand adjourned pursuant to that concurrent resolution.

Thereupon (at 2 o'clock and 17 minutes a.m., Friday, May, 23, 2003), pursuant to the previous order of the House of today, the House adjourned until 2 p.m. on Tuesday, May 27, 2003, unless it sooner has received a message from the Senate transmitting its adoption of House Concurrent Resolution 191, in which case the House shall stand adjourned pursuant to that concurrent resolution.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

2344. A letter from the Director, Regulatory Review Group, Department of Agriculture, transmitting the Department's final rule — 2002 Farm Bill — Conservation Reserve Program — Long-Term Policy (RIN: 0560-AG74) received May 19, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

2345. A communication from the President of the United States, transmitting a request to make available funds for the disaster relief program of the Department of Homeland Security; (H. Doc. No. 108—75); to the Committee on Appropriations and ordered to be printed.

2346. A letter from the Secretary, Department of Energy, transmitting the Department's Annual Report for the Strategic Petroleum Reserve, covering calendar year 2002, pursuant to 42 U.S.C. 6245(a); to the Committee on Energy and Commerce.

2347. A letter from the Chair, Commission on International Religious Freedom, transmitting the Commission's 2003 Annual Report, pursuant to 22 U.S.C. 6412 Public Law 105—292 section 102; to the Committee on International Relations.

2348. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification of intent to obligate funds for purposes of Nonproliferation and Disarmament Fund (NDF) activities; to the Committee on International Relations.

2349. A letter from the Secretary, Department of Health and Human Services, transmitting the semiannual report on the activities of the Office of Inspector General for the